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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,212	10/09/2003	Shigenori Watari	NIP-217-02	8332
24956 7590 07/21/2009 MATTINGLY & MALUR, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314				
EXAMINER				
GORDON, BRIAN R				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/681,212

Applicant(s)

WATARI ET AL.

Examiner

Brian R. Gordon

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7-17-09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/789,625.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 15, 2009 has been entered.

Response to Arguments

1. Applicant's arguments filed February 17, 2009 have been fully considered but they are not persuasive.

Applicant has submitted English translations for the foreign documents JP 2000-54955 and JP 2000-50034. However, after reviewing the documents the examiner finds that neither document discloses the invention as claimed. Clearly JP 2000-54955 does not disclose the invention as claimed. For example, as illustrated in figure 2 of the document there is only one acoustic wave generating means. JP 2000-50034 does not mention an analysis item, storage means, or control means functioning as claimed. If applicant disagrees, it is hereby requested that applicant specify where each of the claims are fully supported in each of the documents.

If view of such the previous rejection is hereby maintained.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 7-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support that a reaction vessel contains an analysis item. The term analysis item as incorporated in the independent claims implies that an analysis item is a component of the specimen and reagent and or liquid. There is no support for such in the original specification. In fact the specification suggests that "an analysis item" refers to a test, property, or any other data or information related to the specimen and/or reagent. (see for example, paragraph [0122]).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the invention can be referred to as an automated analyzer when there is no element included in the device that performs any analysis.

It is unclear how a reaction vessel can contain an analysis item. (see above explanation and claim 9).

It is unclear if applicant intends to invoke 112 6th paragraph (means plus function) in reference to the "a first acoustic wave generation means". The proper language is "means for...." Here applicant claims recites a first acoustic wave generation means installed... It is suggested applicant amend the claims to proper means for language and specify the location of the means after such recitation. It should be noted that the claims broadly recite the generation means is located outside of the vessel a more accurate description is a lateral to the reaction vessel. Furthermore while it is stated that the second means is for irradiating a wave from the bottom, this does not mean it is required that the second means is located below the reaction vessel. It is suggested applicant amend the claims to reflect the respective accurate locations of the wave generation means.

It is unclear what is the relationship of the specimen and reagent to the "a liquid level". Is it applicant intent that the reaction vessel comprises a liquid including a specimen and reagent?

It is unclear how an analysis item can have a liquid level, when an analysis item is not a liquid.

The last line of claim 7 recites "...means by controlling said position". Position of what? Is applicant referring to the position of the acoustic wave irradiated from the first acoustic wave generation means.

Applicant should take note that the above issues may be present in all of independent claims.

As to claims 8-10, and 12, the independent claims are directed two wave generation means such, it is unclear which is being referenced by the terms "the acoustic wave irradiation position" and "the irradiation position". Furthermore it is unclear what constitutes "an associated format". (claims 8-9, 12-13) Associated with what?

Furthermore it should be noted that the existence of "a plurality of analysis items" is not a structural element of the device.

Claims 10 and 15 recite the limitation "the command". There is insufficient antecedent basis for this limitation in the claims.

In addition to the previous issues address above, it suggested applicant amend the last line of claim 11 to read said angle of radiation of the first acoustic wave generation means.

As to claims 12-15, the independent claims are directed two wave generation means such, it is unclear which is being referenced by the terms "the acoustic wave irradiation intensity" and "the irradiation intensity".

Claim 14 recites the limitation "the information on acoustic wave irradiation intensity". There is insufficient antecedent basis for this limitation in the claim.

It is unclear how information can be recorded in a reagent bottle as claimed.

Claim 14 recites the limitation "the reading". There is insufficient antecedent basis for this limitation in the claim.

As to claim 16, it is unclear which generation means is being referenced by the recitation of "at least one of said position, said angle, and said intensity.

Double Patenting

6. Claim 16 is objected to under 37 CFR 1.75 as being a substantial duplicate of claims 7 and 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Since claim 7 provides for the optional selection of a position and angle, the claims are essentially duplicates. Any rejection of claims 7 and 11 would be applicable to the claim 16.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 7, 10-11, and 15-16 are rejected under 35 U.S.C. 102(e) or (a) as being anticipated by Akira JP2000338113.

Akira discloses a structurally equivalent chemical analyzer including a pair of side array sound sources 205 and a pair of sound receiving elements 207 respectively opposite to one another are operated to measure the transmission of partial acoustic wave of the reaction vessel 102 at the position. This measurement is executed on each pair, a transmission amount of acoustic wave at each position is measured, and a position of the maximum difference in the transmission amount is regarded as a position of a liquid surface 209. When the acoustic wave of polarized intensity is applied from a lower sound source 206 to a sound source side, and the liquid surface 209 is pressed

up to a reaction vessel 102 side surface, the liquid surface 209 is lowered at a side surface at the opposite side. This is determined by the surface tension, concentration, hydrophilic property to a vessel wall and the like of an object to be stirred, and the characteristics can be identified on the basis of the intensity of the applied acoustic wave and the polarization of the liquid surface 209. This detection is executed not only before the stirring but also similarly executed after the stirring to be compared, and the achievement in stirring and mixing can be evaluated.

Claim Rejections - 35 USC § 103

9. Claims 8-9 and 12-14 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Akira.

Akira discloses that multiple characteristics/parameters are stored in the controller.

In alternative, the examiner asserts it would have been obvious to one of ordinary skill in the art at the time of the invention recognize the device maybe modified to include a controller/computer system as taught by Laugharn et al., US 6,948,843 to optimize operation of the device.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Murakami; Miyuki; Perkins; John Patrick; Suzuki; Youichirou et al.; Berger; Harald et al.; Javorik; Laszlo J. et al.; Puskas; William L.; Watari; Shigenori et al.; Fishkin; Boris et al.; Miyake; Ryo et al.; and Ohmori; Masashi et al. disclose devices including ultrasonic wave generators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/
Primary Examiner
Art Unit 1797